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June 28, 2006

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

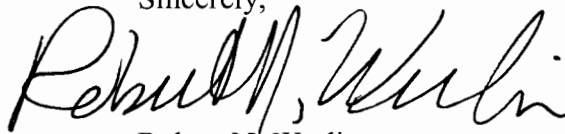
Re: NSTAR Electric Company, D.T.E. 06-40

Dear Secretary Cottrell:

Enclosed for filing is the NSTAR Electric Response to Petitions to Intervene in the above-referenced case. Also enclosed is a Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert N. Werlin", written in a cursive style.

Robert N. Werlin

Enclosures

cc: Joan Foster Evans, Hearing Officer
Service List

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 06-40

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Dated: June 28, 2006

Boston Edison Company, Cambridge Electric
 Light Company, Canal Electric Company and
 Commonwealth Electric Company d/b/a NSTAR Electric

D.T.E. 06-40

I. INTRODUCTION

On June 12, 1006, the Department issued a Notice of Public Hearing and Procedural Conference that established a deadline of June 26, 2006, for petitions for leave to intervene in these proceedings (the “Notice”). According to the Notice, the Department will investigate, among other things, whether the Companies’ filing is consistent with G.L. c. 164, § 96. Notice at 1. The Notice also referenced that the Companies’ Petition is a continuation of a multi-year plan to merge the Companies into a single corporate entity pursuant to NSTAR Rate Settlement, D.T.E. 05-85 (2005); Boston Edison Company/Commonwealth Energy System Merger, D.T.E. 99-19 (1999); Attorney

General v. Department of Telecommunications and Energy, 438 Mass. 256 (2002).

Notice at 1.

The Attorney General of Massachusetts (the “Attorney General”) filed a Notice of Appearance of Counsel and a Notice of Intervention on June 21, 2006 pursuant to G.L. c. 12, § 11E. In addition, the following entities submitted timely petitions for full-party status in this proceeding: (1) The Energy Consortium (“TEC”); (2) Cape Light Compact (“CLC”); (3) the Retail Energy Supply Association (“RESA”); (4) Northeast Energy Associates (“NEA”); (5) President and Fellows of Harvard College (“Harvard”); and (6) Massachusetts Institute of Technology (“MIT”). In addition, Direct Energy Services, LLC (“Direct Energy”) submitted a petition for limited-participant status.

As described in detail below, the Companies oppose the petitions of RESA and NEA to participate as full parties in this case because they have not demonstrated that they are substantially and specifically affected by the proceeding, as required by statute, regulation, case law and Department precedent.¹

II. STANDARD OF REVIEW

In conducting an adjudicatory proceeding, the Department “may allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding, and allow any other interested person to participate by presentation of argument orally or in writing, or for

¹ Although the petitions of customers and those purportedly representing the interests of customers (i.e., Harvard, MIT, TEC and CLC) have not demonstrated that they will be substantially and specifically affected by the proposed merger (see, e.g., Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 11-12, 14 (1999), citing Robinson v. Department of Public Utilities, 416 Mass. 668, 673-674 (1993); Attorney General v. Department of Public Utilities, 390 Mass. 208, 216-217, n.7 (1983); Eastern Edison Company, D.P.U. 96-24, at 6 (1997)), NSTAR Electric does not oppose those petitions.

any other limited purpose,” as the Department may order. G.L. c. 30A, § 10(4).

Pursuant to 220 C.M.R. § 1.03(1)(b), a petition for leave to intervene in a Department proceeding must demonstrate how the petitioner is substantially and specifically affected by the proceeding. Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 8 (1999), citing 220 C.M.R. § 1.03(1)(b) and G.L. c. 30A, § 10. The Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. Id.; Tofias v. Energy Facilities Siting Board, 435 Mass. 340, 346 (2001) (finding that agencies have broad discretion to grant or deny intervention); Attorney General v. Department of Public Utilities, 390 Mass. 208, 216 (1983); Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 45 (1978).

When ruling on a petition to intervene or participate, a Hearing Officer may consider, among other factors:

The interests of the petitioner, whether the petitioner’s interests are unique and cannot be raised by any other petitioner, the scope of the proceeding, the potential effect of the petitioner’s intervention on the proceeding, and the nature of the petitioner’s evidence, including whether such evidence will help to elucidate the issues of the proceeding, and may limit intervention and participation accordingly.

Boston Edison Company, D.P.U. 96-23, at 10 (citations omitted). In Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667, 672 (1975), the Supreme Judicial Court (the “Court”) expressed its concern that “the multiplicity of parties and the increased participation by persons whose rights are at best obscure will, in the absence of exact requirements as to standing, seriously erode the efficacy of the administrative process.”

It is not enough that a petitioner is a customer of an electric or gas company; an individual customer must allege “peculiar damage” for full-party status. Boston Edison

Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 11-12, 14 (1999), citing Robinson v. Department of Public Utilities, 416 Mass. 668, 673-674 (1993); Attorney General v. Department of Public Utilities, 390 Mass. 208, 216-217, n.7 (1983). The Attorney General has the statutory obligation to represent the customers of electric and gas companies. Eastern Edison Company, D.P.U. 96-24, at 6 (1997). Accordingly, in order to obtain full-party status, a petitioner must demonstrate that its interests as a customer are not otherwise adequately represented by the Attorney General or another party. Boston Edison Company, D.P.U. 97-63, at 16 (1997); Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 15; see also Standerwick v. Zoning Bd. of Appeals of Andover, 2006 WL 1643356 (Mass.) (2006) (finding that petitioner must allege an injury within the zone of interests of the statute at issue to establish standing).

In ruling on a petition to intervene, the Department's primary task is to assess how the proposal before the Department might affect an electric or gas company's customers as ratepayers, and not to address allegations on competitive interests. See Cablevision Systems Corp. v. Department of Telecommunications and Energy, 428 Mass. 436 (1998) (ruling that the Department did not commit error of law in concluding that its statutory obligation did not require it to consider the consequences of competition). "Our cases have recognized that the [D]epartment's task, assigned by the Legislature, is the 'protection of ratepayers.'" Id. at 438-439. See Tofias v. Energy Facilities Siting Board, 435 Mass. 340 (2001) (rejecting claim for intervention based on purely economic issues, because property owner failed to identify a specific and substantial interest warranting intervenor status). See also Newton v. Department of Public Utilities, 339 Mass. 535,

543 n.1 (1959) (stating “[t]he discretion to limit intervention was obviously intended to permit the [D]epartment to control the extent of participation by persons not sufficiently and specifically interested to warrant full participation, which might interfere with complicated regulatory processes”).

The Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes. Id., citing G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); Boston Edison, 375 Mass. at 45. A petitioner must demonstrate a sufficient interest in a proceeding before the Department will exercise its discretion and grant limited participation. The Department is not required to allow all petitioners seeking intervenor status to participate in proceedings. Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 8.

Although the Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes, it is sometimes necessary to limit such participation in order to manage efficiently the time and limited resources of the Department. As [Citizens Urging Responsible Energy]’s concerns may be adequately addressed by the Attorney General, limited participant status is not warranted in this proceeding.

Id. at 14.

III. ARGUMENT

A. RESA Has Failed To Meet the Standard for Intervention.

The Petition filed by RESA² states that it is a nonprofit organization and trade association with members who are competitive suppliers (RESA Petition at 1).³ RESA's sole argument in support of its Petition is that its members, as competitors for retail electric customers in the NSTAR Electric service territories, have an interest in how the "often-varying provisions" of the terms and conditions applied by each of the merging companies will be applied to the combined NSTAR Electric (RESA Petition at 2). This assertion is both factual incorrect and, even if true, would not justify RESA to full-party, intervenor status.

As an initial matter, RESA's Petition fails to meet the minimum procedural filing requirements as set forth in the Department's regulations:

(b) Form and Contents of Petition. The petition shall state the name and address of the petitioner. It shall describe the manner in which the petitioner is substantially and specifically affected by the proceeding. It shall state the contention of the petitioner, the relief sought and the statutory or other authority therefor, and the nature of the evidence the petitioner will present if the petition is granted.

² RESA is unclear whether it is seeking intervention or limited-participant status in its petition. Although it requests "party status," it says it does so in order to be on the service list so that it can determine how to proceed in the future (RESA Petition at ¶4). RESA specifically states that it "has not yet determined the nature of its participation in this docket" (*id.*). The Hearing Officer set June 26, 2006, as the date for petitions for intervention or for limited-participant status; it was not a deadline for indecisive potential parties to declare their potential interest in participating to some unknown degree at some future date. Despite RESA's lack of clarity, the Companies err on the side of caution and treat RESA's Petition as one to intervene.

³ RESA's Petition contains a list of members, which includes the disclaimer that "the opinion expressed in this filing may not represent the view of all members of RESA" (RESA Petition at 1, n.1). Accordingly, it is not clear who, if anyone, supports the statements included in the RESA Petition.

220 C.M.R. 1.03(1)(b). In addition to failing to meet the substantive requirements for intervention, the RESA Petition neither states any statutory or other authority nor indicates “the nature of the evidence the petitioner will present if the petition is granted.”⁴

Moreover, RESA’s claim of being substantially and specifically affected by this proceeding is based on errors of fact and law. As to the facts, the only assertion raised by the RESA Petition rests on the false factual premise that the three distribution companies of NSTAR Electric have different terms and conditions for Basic Service. This is not true: the terms and conditions affecting Basic Service and Basic Service tariffs are identical for the three companies, and the merger will have no impact on those terms and conditions. And even if a change were contemplated, which it isn’t, the concerns articulated by RESA are those of competitive suppliers in the electricity markets and would be tangential, at best, to the specific factors at issue in this proceeding.

The Department has previously found, and the Court has upheld, that inter-industry competitors are not automatically entitled to intervention simply by virtue of their status as competitors. Cablevision Systems Corp. v. Department of Telecommunications and Energy, 428 Mass. 436, 439 (1998). In that case, the Court specifically stated that, “[t]he [D]epartment did not commit an error of law in concluding that its statutory obligation to consider the public interest did not require it to consider the consequences of competition between Cablevision and Edison’s unregulated affiliate. The [D]epartment has not considered inter-industry competition to be a relevant factor in evaluating the public interest under G.L. c. 164, § 96.” Id. By the same token, in this

⁴ As noted above, the RESA Petition states that “RESA has not yet determined the nature of its participation in this docket” (RESA Petition at 2).

case, the Department is not required to, and should not, allow full-party intervention status to an entity who wishes only to address the impacts of a distribution company merger on competitive suppliers. Because the RESA Petition has failed to articulate any basis for being substantially and specifically affected by this proceeding, the RESA Petition should be denied.⁵

B. NEA Has Failed To Meet the Standard for Intervention.

The Petition filed by NEA states that NEA is the owner and operator of a 300 megawatt generating facility in Bellingham, Massachusetts, and has power purchase agreements in effect with Boston Edison and Commonwealth (NEA Petition at 1). NEA also states that the merger might result in the transfer or assignment of the Commonwealth power purchase agreement (“PPA”) to the merger corporate entity, and that the Companies have “expressed their confidence” that they will comply with their contractual obligations (*id.* at 3).

The Companies do not generally disagree with these assertions, but they do not constitute grounds for intervention as a party in this proceeding. Although the Companies have no reason to believe that there will be a dispute about the provisions of the PPAs in this regard, these are issues of contract law that will be determined by the language in the applicable contracts and they have no bearing on the issues being considered by the Department in reviewing the Companies’ merger proposal. Even assuming there were a dispute about the terms of the PPAs, these types of secondary

⁵ The Direct Energy petition for limited-participant status asserts that it also meets the standard for intervention for the reasons stated by RESA. Direct Energy similarly fails to meet the standard of full-party intervention. However, the Companies do not object to a grant of limited-participant status to Direct Energy.

pecuniary interests do not meet the requirements for intervention as a party. See Tofias v. Energy Facilities Siting Board, 435 Mass. 340 (2001).

Because the NEA Petition has failed to articulate any basis for being substantially and specifically affected by this proceeding, the NEA Petition should be denied.

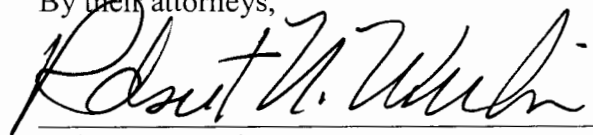
IV. CONCLUSION

For the foregoing reasons, NSTAR Electric requests that the Department deny the petitions of the Retail Energy Supply Association and Northeast Energy Associates to participate as full parties in this proceeding.

Respectfully submitted,

**BOSTON EDISON COMPANY
CAMBRIDGE ELECTRIC LIGHT COMPANY
COMMONWEALTH ELECTRIC COMPANY
CANAL ELECTRIC COMPANY**

By their attorneys,

A handwritten signature in black ink, appearing to read "Robert N. Werlin", is written over a horizontal line.

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Dated: June 28, 2006